

tank wall; and

aperture means for receiving the flue which extends therethrough, said aperture means defined by said liquid holding means.

REMARKS

Claims 22-31, and 42-54 are pending in this application. Claims 1-21, and 32-41 have been withdrawn from consideration, without prejudice. Claim 55 is new. Pursuant to the Examiner's indication of allowability, claim 55 is a rewriting of claim 51 in independent form including all of the limitations of the base claim and intervening claim, and therefore no substantive amendment has occurred which might otherwise limit the scope of the amendment under the Doctrine of Equivalents. Claims 22, 25, 26, 30, 42, 43, and 55 are independent. Applicant submits an additional payment of \$51 (\$42 plus \$9) to cover the extra claim fees (previously paid for 23 claims with 6 independent claims; currently pending are 24 claims with 7 independent claims).

Applicant thanks the Examiner for the allowance of claims 22-31, and for indication of allowance of claim 55 (Claim 51 rewritten in independent form).

Applicant submits the proposed drawing corrections in the form of replacement figures, namely Figures 15, 16, 17 and 18, all in compliance with 37 C.F.R. 1.84. Changes to Figure 15 include addition of a voltage thermostat and instructions and fan coil unit. The features shown in Figures 16, 17 and 18 are identical to those shown in the previous submission of such supplemental drawings filed April 15, 2002. Entry of the figures is respectfully requested.

Claim Rejections – 35 U.S.C. Section 103(a)

Claims 43-50 were rejected under Section 103(a) as being unpatentable over Matsumoto et al. (4,915,296) (hereafter "Matsumoto '296") in view of Cornell, Jr. (2,115,706). The Examiner asserts that Matsumoto et al. (4,915,296) discloses all of the limitations of the claims except for employing a non-circulating tank.

Applicant has amended claim 43 to more particularly define the invention which overcomes the rejection as follows. First, the Examiner provides no support for the generalized assertion that Matsumoto '296 discloses all of the limitations except for the non-circulating tank. For instance, nowhere does Matsumoto '296 (and Matsumoto, U.S. Patent No. 4,921,166; "Matsumoto '166") disclose a tank for use with a liquid heating vessel having a flue defined by a flue wall for release of exhaust. Moreover, none of the references discloses aperture means for receiving such a flue. More specifically, the Matsumoto patents do not include an inner tank wall defining an aperture for receiving the flue which extends therethrough. If Matsumoto '296 is somehow interpreted as showing a heating vessel having a flue defined by a flue wall, it lacks the showing of a holding means defining an inner tank wall defining an aperture for receiving the flue which extends therethrough; and if Matsumoto '296 is somehow interpreted as showing an inner tank wall defining an aperture for receiving a flue which extends therethrough, it does not show such device in use with a heating vessel having a flue defined by a flue wall. No secondary reference discloses these features. Accordingly, Matsumoto '296 and/or Matsumoto '166, alone or in combination with other references, including Cornell, Jr., still does not reveal all the features shown in independent claim 43. For this reason alone, Applicant respectfully requests withdrawal of this rejection.

Second, one of ordinary skill in the art, when confronted with Matsumoto '296, would not find it obvious to include a non-circulating tank, whether that tank is shown in Cornell, Jr. as element 29, or otherwise. For instance, Matsumoto '296 is specifically focused on the circulating aspects of the tank 10, water boiler 12 and radiator 14. Specifically, the patent references a circulating pipe system 16 which connects the tank 10, water boiler 12 and radiator 14. Moreover, a cycle of circulation of water is repeated throughout each of the embodiments as described in Matsumoto '296. Accordingly, Matsumoto '296 teaches away from use of a non-circulating tank. Rather, the circulating cycle is repeatedly carried out (See: Column 5, lines 35-39). Since Matsumoto '296 confines the features to a tank which circulates, it is not appropriate to look elsewhere for a non circulating tank. It would not be obvious to one of ordinary skill in the art, when confronted with Matsumoto '296, to go against the teachings of that reference. Matsumoto '296 lacks any suggestion that it should be modified in a manner required to meet the claims of Applicant's invention. Further, modification of the heating system of Matsumoto '296 to include a non-circulating tank 29 of Cornell Jr. would not assist with energy conservation as suggested by the Examiner. To make such modification of the system of Matsumoto '296 would be irrelevant, and no justification is provided for making a modification. The system of Matsumoto '296 is complete and functional in itself, so there would be no reason to use parts from or add or substitute parts to that reference. Moreover, such a strained interpretation of the references could be made only by hindsight. Accordingly, the subject matter of Applicant's invention as a whole would not have been obvious at the time the invention was made to a person having ordinary skill in the art.

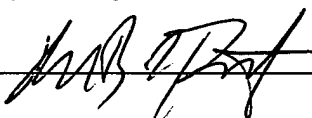
Even if one were compelled to consider sources outside of Matsumoto et al., one would not be compelled to look to Cornell, Jr. It is impermissible to use Applicant's invention as a blueprint for working backwards to formulate an assertion of obviousness in this case. Accordingly, Applicant respectfully requests withdrawal of this rejection.

CONCLUSION

Applicant respectfully submits that all outstanding objections and rejections have been addressed and are now either overcome or moot. Applicant further submits that all claims pending in this application are patentable over the prior art made of record and not relied upon. Reconsideration and withdrawal of those objections and rejections is respectfully requested.

Applicant's undersigned attorney may be reached by telephone at (715) 835-5232 or by facsimile at (715) 835-9890. All correspondence should be directed to the below listed address.


Respectfully Submitted,



By: Anthony J. Bourget
Attorney for Applicants
Registration No. 36,753

Bourgetlaw.com
Anthony J. Bourget
1119 Regis Court, Suite 1B
P.O. Box 81
Eau Claire, WI 54702-0081

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on November 3, 2003.

 11-3-03
Signature of Person Mailing Date